

§ 105-164.28. Certificate of exemption.

(a) Relief From Liability. – Except as provided in subsection (b) of this section, a seller is not liable for the tax otherwise applicable if the Secretary determines that a purchaser improperly claimed an exemption, or if the seller within 90 days of the sale meets the following requirements:

- (1) For a sale made in person, the seller obtains a certificate of exemption or a blanket certificate of exemption from a purchaser with which the seller has a recurring business relationship. If the purchaser provides a paper certificate, the certificate must be signed by the purchaser and state the purchaser's name, address, certificate of registration number, reason for exemption, and type of business. For purposes of this subdivision, a certificate received by fax is a paper certificate. If the purchaser does not provide a paper certificate, the seller must obtain and maintain the same information required had a certificate been provided by the purchaser.
- (2) Repealed by Session Laws 2013-414, s. 43(a), effective August 23, 2013.
- (3) For a sale made over the Internet or by other remote means, the seller obtains the purchaser's name, address, certificate of registration number, reason for exemption, and type of business and maintains this information in a retrievable format in its records. If a certificate of exemption is provided electronically for a remote sale, the requirements of subdivision (1) of this subsection apply except the electronic certificate is not required to be signed by the purchaser.
- (4) In the case of drop shipment sales, a third-party vendor obtains a certificate of exemption provided by its customer or any other acceptable information evidencing qualification for a resale exemption, regardless of whether the customer is registered to collect and remit sales and use tax in the State.

(b) Substantiation Request. – If the Secretary determines that a certificate of exemption or the required data elements obtained by the seller are incomplete, the Secretary may request substantiation from the seller. A seller is not required to verify that a certificate of registration number provided by a purchaser is correct. If a seller does one of the following within 120 days after a request for substantiation by the Secretary, the seller is not liable for the tax otherwise applicable:

- (1) Obtains a fully completed certificate of exemption from the purchaser provided in good faith. The certificate is provided in good faith if it claims an exemption that meets all of the following conditions:
 - a. It was statutorily available in this State on the date of the transaction.
 - b. It could be applicable to the item being purchased.
 - c. It is reasonable for the purchaser's type of business.
- (2) Obtains other information to establish the transaction was not subject to tax.

(c) Fraud. – The relief from liability under this section does not apply to a seller who does any of the following:

- (1) Fraudulently fails to collect tax.
- (2) Solicits purchasers to participate in the unlawful claim of an exemption.
- (3) Accepts an exemption certificate when the purchaser claims an entity-based exemption when the subject of the transaction sought to be covered by the exemption certificate is received by the purchaser at a location operated by the seller, and the claimed exemption is not available in this State.
- (4) Had knowledge or had reason to know at the time information was provided relating to the exemption claimed that the information was materially false.

(5) Knowingly participated in activity intended to purposefully evade tax properly due on the transaction.

(d) Purchaser's Liability. – A purchaser who does not resell an item purchased under a certificate of exemption is liable for any tax subsequently determined to be due on the sale.

(e) Renewal of Information. – The Secretary may not require a seller to renew a blanket certificate of exemption or to update exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section, a recurring business relationship exists when a period of no more than 12 months elapse between sales transactions. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 914, s. 1; 2000-120, s. 6; 2005-276, s. 33.15; 2009-451, s. 27A.3(r); 2011-330, s. 28; 2013-414, s. 43(a).)